

CRA-S-573-SB-2009

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

201 (2 cases)

Date of Decision:- 16.12.2023

1 CRA-S-573-SB-2009

Nain Singh

.....Appellant

Versus

State of Punjab

.....Respondent

2 CRR-1377-2009

Rampal

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON’BLE MR. JUSTICEALOK JAIN

Present: Mr. C.S. Bakhshi, Advocate
for the appellant(s) in CRA-S-573-SB-2009.

Mr. Satbir Rathore, Advocate with
Mr. Chander Kant Rana, Advocate and
Mr. Vinod Pundir, Advocate
for the petitioner(s) in CRR-1377-2009.

Mr. Kamalpreet Bawa, AAG, Punjab.

ALOK JAIN, J.

1. The present set of two cases arise out of the conviction order
dated 20.02.2009, passed by the learned Additional Sessions Judge,

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Nawanshahr, whereby the appellant Nain Singh had been convicted for three years imprisonment, holding him guilty under Section 308 of the Indian Penal Code (herein referred to as the code), against which CRA-S-573-SB-2009 has been filed by the appellant-convict and CRR-1377-2009 has been filed by the complainant for enhancement of sentence.

2. Learned counsel for the appellant has narrated the factual matrix which was not opposed by the counsel for the State, assisted by the counsel for the complainant. After brief narration of the facts, learned counsel for the appellant opened his arguments and submitted that the provisions of Section 308 of Indian Penal Code are not met and he relies upon the definition of culpable homicide under Section 299 r/w section 308 of the Indian Penal Code, which is reproduced as under:

299. Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Explanation 1.—A person who causes bodily injury to another who is laboring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented.

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Explanation 3.—The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

308. Attempt to commit culpable homicide.—Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

3. It is submitted by the counsel for the appellant that there was no attempt by the appellant to commit an act which could be declared as culpable homicide under section 299 of the code and the basic ingredients of the offence as envisaged under section 299 r/w 308 have not been proved as there was no intention or knowledge on part of the appellant to 'cause death' of the victim. To substantiate his arguments, he relies upon the medical evidence and the testimony of PW3-Dr. Baldev Singh who initially testified that the injuries were dangerous to life. However, he later deposed (after going through the X-ray report of the victim) that the same were simple in nature.

4. The second limb of the argument raised by the appellant is that there is no recovery of any weapon from the appellant and hence, the prosecution failed in connecting the link of weapons recovered with the injury caused.

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5. The third argument raised by the appellant is that initially neither the FIR was lodged nor the challan was presented under Section 308 of the code in 1995. Despite that, after four years, it was only on the basis of a criminal complaint which was clubbed together with the FIR, at the stage of framing of charges, Section 308 of the Code was added.

6. The appellant also tried to demonstrate that the prosecution failed in its version, as admittedly after the incident occurred, it was alleged that the victims were inflicted injuries in the police post but no official from that police post was brought forth as a witness to substantiate the same. He further submitted that, in fact, neither the complainant nor the brother of the injured namely 'Manohar' stepped into the witness box. He also reiterates that the electricity meter was installed in his name on the land in question, and a civil suit was already going on between the parties which was ultimately decreed in his favor. The FIR was immediately lodged by the injured i.e. Manohar only after the filing of the civil suit.

7. Another issue raised by the appellant is that the complainant is playing hide and seek and is having a capricious attitude as he entered into a compromise with one of the co-accused Partap Singh, who was declared as a proclaimed offender. Subsequently, their statements were recorded for quashing of the same FIR *qua* him in CRM-M-15064 of 2013 and the said FIR was ultimately quashed *qua* the co-accused Partap Singh vide order dated 19.07.2013. He further emphasizes that in the said quashing petition also, there was no mention about Section 308 of the Code at all. He has relied upon judgment of Hon'ble Supreme Court of India "***Criminal***

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Appeal No. 1390 of 2007 decided on 09.10.2007 in case titled as Bishan Singh & Another Vs. The State, the relevant extract of which is as under:

11. “Before an accused can be held to be guilty under Section 308 IPC, it was necessary to arrive at a finding that the ingredients thereof, namely, requisite intention or knowledge was existing. There cannot be any doubt whatsoever that such an intention or knowledge on the part of the accused to cause culpable homicide is required to be proved. Six persons allegedly accosted the injured. They had previous enmity. Although overt-act had been attributed against each of the accused who were having lathis, only seven injuries had been caused and out of them only one of them was grievous, being a fracture on the arm, which was not the vital part of the body.”

He further relied upon the judgment of Hon’ble Supreme Court of India in ***Criminal Appeal No. 2204 of 2010 decided on 20.09.2020 in case titled as Roop Chand @ Lala Vs. State (NCT) of Delhi***”, the relevant extract of which is as under:

“It is thus crucial to determine whether the appellant had ‘intention’ or ‘knowledge’ that the injury inflicted on the victim could cause the latter’s death and as a result thereto the appellant could be guilty of committing culpable homicide not amount to murder”

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“Accepting it to be true, what the injured has deposed, we find it difficult to hold that the appellant had any intention or knowledge to inflict such injury which could cause the victim’s death within the meaning of culpable homicide not amounting to murder. The appellant had in a fit of rage inflicted singular injury on the left temple of the injured and made no attempt to repeat such attack or strike a second blow, which indicates that he did not intend to cause any fatal injury. Similarly, given the facts of this case, it would be far-fetched to hold that the appellant knew that his actions were likely to cause the death of the injured.”

8. At last, learned counsel for the appellant argued that at the best, the appellant’s actions would fall under the rigors of Section 323 or Section 324 of the Code for which he has already deposited the fine and has undergone 15 days of imprisonment. He also submits that, in fact, this litigation has been going on for the last twenty-eight and a half years and a lenient view of the same be taken considering the mitigating circumstances in this case.

9. *Per contra*, learned State counsel assisted by the counsel for the complainant has vehemently opposed and submitted that the rigors of Section 308 of Indian Penal Code are duly met out. It is submitted that the appellant(s) in a planned manner, armed with a *Danda* gave three blows successively on the head of the victim, which is a vital body part, therefore, the learned trial Court has rightly convicted him under Section 308 of the

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Code as the requisite *mens rea* stands duly proved. It is for this reason only that the sentence of 3 years was awarded.

10. Learned counsel for the complainant has also argued and relied upon certain judgments i.e. “*Sis Pal Vs. State of Haryana, 2008(1) R.C.R. (Criminal) 620, Vidya Nand Vs. State of Haryana, 2004(4) R.C.R. (Criminal) 658, Manjit Singh Vs. State of Punjab, 2011(2) R.C.R. (Criminal) 458 and Albel Singh Vs. State of Punjab, 2016(1) R.C.R. (Criminal) 202*”, to substantiate his contentions that the compensation be enhanced in case the appeal is to be allowed.

11. I have heard the learned counsel for the parties and perused the lower court record. It is indubitable that the appellant-Nain Singh gave three dang blows on the head of the victim and that too ‘**successively**’. The ocular evidence is duly supported by the medical evidence. The injuries on the victim Rampal especially injury No. 4 was declared to be grievous in nature. Further, 03 injuries out of the total 05 inflicted upon another victim Janak Raj were collectively declared as dangerous to life as the same were on the vital parts of his body.

12. The *mens rea* is irrefutable as the acts of the appellant-Nain Singh inflicting injuries on the head and that too three successive blows with a *dang/danda*, clearly demonstrates that he acted with the intention or had the requisite knowledge to cause a bodily injury which is likely to cause death, hence, the ingredients of section 299 are duly met out. The Victim survived the attack, therefore, the trial Court has rightly held the appellant-Nain Singh guilty under the offence of Section 308 of the Code,

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hence, I do not find any infirmity in the judgment passed by the Learned trial Court.

13. In light of the above, the conviction of appellant-Nain Singh is upheld. However, since the appellant-Nain Singh is around 70 years of age as of today, coupled with the fact that there is no other case lodged against him during all these years, I deem it appropriate to invoke the provisions of The Probation of Offenders Act, 1958 and the appellant-Nain Singh be released on probation for a period of six months on the following conditions as enshrined under Section 4 of the Probation of Offenders Act, 1958 **(Power of Court to release certain offenders on Probation of Good conduct):**

1. He shall execute a bond for good behavior with two solvent sureties in the sum of Rs. 25,000/- which shall be executed before the trial Court within a period of one month from today.
2. The said bond shall be in force for a period of six months.
3. He shall subject himself to the supervision of the Probation Officer and subject to the conditions laid down in the Probation of Offenders Act.

14. It is clarified that in case, there is any breach of the aforesaid conditions, the appellant will forthwith be taken into custody and shall have to undergo the remaining sentence awarded to him by the trial Court.

15. However, after hearing learned counsel for the complainant the fine of Rs. 2,000/- is enhanced to Rs. 20,000/- to be deposited with the CJM concerned and the same be released to the victim. In case, the victim has

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expired the same be released to his Legal heirs after proper verification and identification.

16. In light of the above, the appeal as well as the revision stand disposed of.

(ALOK JAIN)
JUDGE

16.12.2023
Parul

Whether speaking/reasoned:-	Yes/No
Whether Reportable:-	Yes/No